Supreme Court, U.S.
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In The
Supreme Court of The United States
October Term 1999

STEPHEN ALEXANDER,
Petitioner,

v.

UNITED STATES OF AMERICA
Respondent.

Petition For A Writ Of Certiorari
To The United States
Court of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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42/pp

QUESTION PRESENTED

1. Whether a police officer, after concluding a traffic stop, may detain the motorist further, without a reasonable and articulable suspicion, in order to deploy a canine that is at his immediate disposal.

LIST OF PARTIES TO THE PROCEEDINGS

The full names of petitioner in this case is Stephen Alexander

The respondent in this case is the United States of America.

TABLE OF AUTHORITIES

Judicial Decisions

United States v. Beck
1998 WL 154455, at *5 2

United States v. Bloomfield
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Statutory and Constitutional Provisions

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21 U.S.C. 881(a)(6) (1982) 1

OPINIONS BELOW

The order denying rehearing is unreported and is Appendix A (Apdx A - 1). The order of the Eighth Circuit is unreported and is Appendix A (Apdx A - 2). The opinion of the District Court is Unreported and is Appendix B (Apdx B - 14).

JURISDICTION

The decision of the United States Court of Appeals for the Eighth Circuit denying Rehearing by the panel was delivered September 13, 1999. This petition is filed within the time allowed by law. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in pertinent part:

> The right of the people to be secure . . . against unreasonable searches and Seizures, shall not be violated, ...

STATEMENT OF THE CASE

The District Court had jurisdiction under 21 U.S.C. 881(a)(6) (1982), as the complaint arose under a civil forfeiture action. The petitioner is the claimant of money seized by law enforcement following a traffic stop for speeding. A civil forfeiture action was brought by the United States after the money was seized from Mr. Alexander on May 4, 1997. The case went to trial on May 14, 1998. Mr. Alexander claimed he was illegally detained and the money illegally seized. The district court found that a brief detention of a motorist by a drug interdiction officer to conduct a contemporaneous, on-site canine sniff is reasonable if it was conducted pursuant to a valid traffic stop. Mr. Alexander appealed to the Eighth Circuit Court of Appeals which affirmed the district court.

On May 4,1997, Omaha police officer Anthony R. Ward, and his dog Fanta, were in a cruiser working drug interdiction along Interstate 80 in Omaha, Nebraska. At 1:26 pm., Ward observed a 1986 Ford F-250 truck pulling a U-Haul trailer in excess of the posted speed Limit of 60 miles per hour. The radar clocked the truck at 71 miles per hour. Ward pulled over the vehicle without incident and approached the driver, Mr. Alexander. Ward asked for driver's license, registration, and paperwork on the U-Haul trailer. Mr. Alexander handed Ward the requested documents. Ward returned to his cruiser and completed a data check on the vehicles.

Ward testified that "everything came back OK" on the data check. Ward then exited the cruiser with his dog and approached Mr. Alexander. Ward advised Mr. Alexander that he was going to walk his dog around the vehicle before returning the documents. Ward testified that he did not have a reasonable and articulable suspicion of any criminal activity on the part of Mr. Alexander. Ward testified that his normal procedure is to do a canine sniff on 99% of the vehicles he stops.

Ward commenced the canine sniff on the vehicles. Ward advised Mr. Alexander that the dog alerted and that he would have to search the trailer. Ward opened the trailer and deployed the dog. Ward says the dog alerted on some boxes in the back of the trailer. Ward entered the trailer and removed a duffel bag. Ward opened the duffel bag, which according to Ward had an odor of marijuana. No marijuana was located. The duffel bag was filled with bundles of money. Ward handcuffed Mr. Alexander because "he was under investigation for possibly transporting drugs."

REASONS FOR GRANTING THE WRIT

In the Memorandum Opinion, the district court noted that the issue raised by Mr. Alexander is one of first impression for the Eighth Circuit: Whether an officer must have reasonable suspicion to conduct a canine sniff during a routine traffic stop. The Eighth Circuit had previously held that police must have reasonable suspicion that a person is

involved in criminal activity before an officer may expand the scope of a traffic stop and continue to detain a person for additional investigation. *United States v. Carrate*, 122 F.3d 666 (6th Cir. 1997). There is a conflict between these two rulings. In Addition, this case is one of first impression and involves an important question of federal law which has not been, but should be, settled by the U.S. Supreme Court.

In *United States v. Bloomfield*, 40 F.3d 910 (8th Cir. 1994), the appeals court ruled that once an officer stops a driver for a legally authorized reason, he is entitled to conduct an investigation reasonably related in scope to circumstances that justified interference in the first place. In Mr. Alexander's case, he was stopped for speeding. A canine sniff is not related in scope to a speeding violation. Ward unlawfully expanded the scope of the investigation. The continued detention of Mr. Alexander to conduct further investigation was unlawful. The resulting seizure of his currency was unlawful.

A consensual encounter can become in investigatory detention as a result of police conduct, *United States v. Beck* 1998 WL 154455, at *5, and "circumstances indicative of a seizure may include . . . use of language or tone of voice indicating that compliance with the officer's request might be compelled."

The facts show the officer completed his business with Mr. Alexander, but then went on to detain him as a part of his routine. Investigative stops are constitutionally impermissible under the Fourth Amendment unless an officer has a

reasonable suspicion, based on articulable facts, that criminal behavior is afoot. *United States v. Dixon*, 51 F.3d 1376 (8th Cir. 1995).

The District Court and Eighth Circuit should not be allowed to disregard their own prior decisions, or the decisions of the United States Supreme Court.

CONCLUSION

For these reasons, a writ of certiorari should be issued to review the judgment and opinion of the Eighth Circuit.

December 8, 1999

Respectfully Submitted,
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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-2770NEO

United States of America Appellee, v. $404,905.00 in U.S. Currency, Defendant, Stephen Alexander, Appellant.	* * *Appeal from the *United States District *Court for the District *of Nebraska. *

The petition for rehearing filed by the appellant has been considered by the court and is denied.
(5193-010199)

Sepetember 13, 1999

Order Entered at the Direction of the Court:
/s/ Michael E. Gans
Clerk, U.S. Court of Appeals, Eighth Circuit

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 98-2770

United States of America	*
Plaintiff-Appellee,	*
vs.	*
$404,905.00 in U.S. Currency,	*Appeal from the
Defendant,	*United States District
Stephen Alexander,	*Court for the District
Claimant-Appellant.	*of Nebraska.

Submitted: January 21, 1999
Filed: June 29, 1999

Before McMILLIAN, BEAM, and LOKEN, Circuit Judges.

LOKEN, Circuit Judge.

Omaha police officer Anthony Ward stopped a truck and U-Haul trailer driven by Stephen Alexander for speeding on Interstate 80. Officer Ward's K-9 dog, Fanta, alerted on the outside of the trailer, and a full search uncovered

$404,905 in drug-tainted United States currency. The government commenced this civil forfeiture proceeding against the currency. Alexander timely filed a claim. Following a bench trial, the district court[1] concluded that the government established probable cause linking the currency to drug trafficking and declared it forfeited. See 21 U.S.C. § 881(a)(6). Alexander appeals. The issue on appeal is whether Officer Ward violated Alexander's Fourth Amendment rights during the traffic stop, a novel issue concerning the Fourth Amendment interplay between traffic stops and canine sniffs. We agree with the district court's resolution of the issue and therefore affirm.

We briefly recite the relevant facts as found by the district court. After stopping the vehicle for speeding, Officer Ward obtained Alexander's driver's license, vehicle registration, and U-Haul rental papers and returned to his cruiser, where he completed license and vehicle checks in five to eight minutes. Before returning these documents to Alexander, Ward exited his cruiser with Fanta and told Alexander the dog would sniff the exterior of his truck and trailer for drugs. We quote the district court's description of what happened next:

> Ward commenced the canine sniff at the front end of the U-haul trailer, walked down the

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[1]The HONORABLE JOSEPH F. BATAILLON, United States District Judge for the District of Nebraska,

> driver's side, turned and walked towards the rear, and proceed[ed] back on the opposite side. As Ward proceeded to the right front portion of the trailer his dog alerted. Ward estimated that it took his dog less than thirty second[s] to walk three quarters of the way around the perimeter of the trailer where it alerted. Ward advised Alexander that his dog had alerted on his trailer and advised Alexander that he would have to search the trailer. . . . Ward estimated that he took under two minutes to conduct the canine sniff, return the dog to the cruiser, and approach Alexander to advise him the dog had alerted to the trailer.

After Alexander unlocked the trailer, Officer Ward instructed Fanta to sniff for drugs. The dog promptly alerted on a duffel bag and boxes which smelled strongly of marijuana and contained bundles of money. The truck and trailer were taken to the Omaha impound lot, where a full search uncovered the $404,905 in question.

The Fourth Amendment's exclusionary rule applies to quasi-criminal forfeiture proceedings. If the currency and other contents of Alexander's vehicle should be suppressed because of an unconstitutional search or seizure, the government must prove probable cause with other, untainted evidence. See One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693, 696 (1965); United States v. $7,850.00 in U.S.

Currency, 7 F.3d 1355, 1357 (8th Cir. 1993). Alexander argues that Officer Ward violated the Fourth Amendment when he led Fanta on a canine sniff of the trailer's exterior. The Fourth Amendment protects against unreasonable searches and seizures. "A 'search' occurs when an expectation of privacy that society is prepared to consider reasonable is infringed." United States v. Jacobsen, 466 U.S. 109, 113 (1984). Seizure includes official detention of a person as well as meaningful interference with a person's possessory interests in property. See Michigan v. Summers, 452 U.S. 692, 696-700 (1981). "Reasonableness. . . is measured in objective terms by examing the totality of the circumstances." Ohio v. Robinette, 117 S.Ct. 417, 421 (1996). In addition to these general standards, certain important, undisputed Fourth Amendment principles frame the novel issue we must resolve.

First, a police officer who personally observes a traffic violation has probable cause to stop the vehicle and offending driver. See Pennsylvania v. Mimms, , 434 U.S. 106,109 (1977); United States v. Barahona, 990 F.2d 412,416 (8th Cir. 1993). On the other hand, when police have no probable cause to stop for a traffic violation, a purely investigative stop must be based upon at least a reasonable suspicion "that either the automobile or its occupants are subject to seizure under the applicable criminal laws." Delaware v. Prouse, 440 U.S., 648, 655 (1979). A valid traffic stop may not be challenged on the ground that it was a pretext for other criminal investigation. See Whren v.

United States, 116 S.Ct. 1769, 1772-74 (1996). Alexander concedes he was validly stopped for speeding.

Second, having made a valid traffic stop, the police officer' may detain the offending motorist while the officer completes a number of routine but somewhat time consuming tasks related to the traffic violation, such as computerized checks of the vehicle's registration and the driver's license and criminal history, and the writing up of a citation or warning. See United States v. Carrazco, 91 F.3d 65, 66 (8th Cir. 1996). During this process, the officer may ask the motorist routine questions such as his destination, the purpose of the trip, or whether the officer may search the vehicle, and he may act on whatever information is volunteered.[2]

Third, a canine sniff of the exterior of personal property in a public location "is so limited both in the manner in which the information is obtained and in the content of the information revealed by the procedure" that it does not constitute a "search"' within the meaning of the Fourth Amendment. United States v. Place, 462 U.S. 696, 707 (1983) (luggage at an airport). That principle applies to the canine sniff of the exterior of Alexander's U-Haul trailer stopped along an interstate highway. In general, "[t]he

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[2]However, when an officer while conducting a valid traffic stop asks routine questions about the driver's destination, the purpose of the trip, and so forth, the individual is not legally obligated to answer, may not be compelled to answer, and may not be arrested for refusing to answer. See Terry v. Ohio, , 392 U.S. 1, 34 (1968) (White, J., concurring).

exterior of a car . . . is thrust into the public eye, and thus to examine it does not constitute a 'search.'" New York v. Class, 475 U.S. 106,114 (1986). We have held that "a dog sniff of a car parked on a public street or alley [does] not amount to a search for Fourth Amendment purposes." United States v. Friend, 50 F.3d 548, 551 (8th Cir. 1995), vacated in part, 517 U.S. 1152 (1996). Similarly, other circuits have concluded that a dog sniff of the exterior of a car waiting at a roadblock established to check licenses and vehicle registrations is not a Fourth Amendment search. See Merrett v. Moore, 58 F.3d 1547, 1553 (11th Cir. 1995), cert. denied, 519 U.S. 812 (1996); United States v. Morales-Zamora, 914 F.2d 200, 205 (10th Cir, 1990). Neither Merrett nor Morales-Zarno required the police to have reasonable suspicion that a vehicle was transporting contraband before subjecting it to a canine sniff. Accord United States v. Rodriguez-Morales, 929 F.2d 780, 788-89 (1st Cir. 1991) (dog sniff of impounded vehicle), cert. denied, 502 U.S. 1030 (1992).

Fourth, once Fanta alerted on the exterior of Alexander's trailer, Officer Ward had probable cause to search the trailer's interior without a warrant. See United State v. Bloomfield, 40 F.3d 910, 919 (8th Cir. 1994) (en banc), cert. denied 514 U.S. 1113 (19 9 5); cf. Wyoming v. Houghton, 119 S.Ct. 1297 (1999).

Hemmed in by these established principles regarding traffic stops and canine sniffs, Alexander argues the thirty seconds it took Fanta to circle and alert on the trailer were an

unconstitutional detention that tainted the subsequent seizure of the currency. More specifically, he contends that Officer Ward unreasonably extended the valid traffic stop by performing the canine sniff without reasonable suspicion after he had decided to return Alexander's travel documents and let Alexander go on his way.

Length of detention is a factor used in analyzing the validity of purely investigative Terry stops -- police officers who detain persons with only reasonable suspicion that criminal activity is afoot must "diligently pursue[] a means of investigation that [is] likely to confirm or dispel their suspicions quickly," or the stop becomes a *de facto* arrest without probable cause. United States v. Sharpe, 470 U.S. 675, 686 (1985). That doctrine does not fit this case. A traffic stop is not investigative; it is a form of arrest, based upon probable cause that a penal law has been violated. Length of detention following an arrest is normally not of judicial concern, provided the arrested person is taken "without unnecessary delay before the nearest available" judicial officer, Fed.R.Crim.P.5(a); See County of Riverside v. McLaughlin, 500 U.S. 44 (1991). Arrest also justifies investigative procedures that are not allowed in the Terry stop context. For example, police can conduct a more thorough search of the detainee than the limited *weapons* frisk permitted by Terry -- they may search for *evidence* of criminal activity, even evidence of a crime other than the crime for which the arrest was made. See United States v. Robinson, 414 U.S. 218 (1973). Recognizing the arrest

underpinnings of even routine traffic stops, the Supreme Court has expressly cautioned, "We of course do not suggest that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a Terry stop." Berkemer v. McCarty 468 U.S. 420, 439 & n.29 (1984); see; also Michigan v. Long 463 U.S. 1032, 1035 n.1 (1983). Thus, Alexander's contention, though superficially plausible, requires a closer look.

Depending upon state law, some traffic stops justify an immediate full custodial arrest of the offending driver, for example, when a hit-and-run driver is observed speeding from the scene of a fatal accident. Other traffic stops may be routine at the outset but may develop information justifying a custodial traffic arrest, for example, when a traffic offender is found to be drunk or to be operating the vehicle without a valid license. Given the myriad situations in which traffic stops occur, it is not reasonable to subject them to the length-of-detention analysis we use in evaluating investigatory stops. On the other hand, in analyzing constitutional issues arising from traffic stops, the Supreme Court has recognized the brief and routine nature of most of these encounters. For example, though the roadside detention is a seizure for Fourth Amendment purposes, unless the vehicle's occupants are under full custodial arrest, routine questioning does not normally require Miranda warnings. See Berkemer, 468 U.S. at 441-42. And in Knowles v. Iowa 119 S.Ct. 484, 498 (1998), the Court recently held that a routine traffic stop "does not by itself justify the often considerably greater

intrusion attending a full field-type search" incident to an arrest. By declining to apply the search-incident-to-arrest principles of United States v. Robinson, Knowles confirmed that a routine traffic stop is not the equivalent of a full custodial arrest for all constitutional purposes.

Applying the reasoning of Berkemer and Knowles to the issue of unreasonable detention during a traffic stop, we believe the Supreme Court would not closely examine the time it takes a traffic officer to complete the traffic stop itself, consistent with the discretion given arresting officers in other contexts. But once the officer decides to let a routine traffic offender depart with a ticket, a warning, or an all clear -- a point in time determined, like other Fourth Amendment inquiries, by objective indicia of the officer's intent -- then the Fourth Amendment applies to limit any subsequent detention or search. That is the line we have drawn in prior cases. While the Supreme Court generally eschews line-drawing in Fourth Amendment cases, some such distinction must be made, as it was in Knowles, in order to apply reasonable Fourth Amendment length-of-detention restrictions to routine traffic stops.

Applying the line we have established to this case is not easy. The first question is, when was the traffic stop completed. Normally, a traffic stop cannot end until the police officer has returned the offending driver's license and vehicle registration. But here it is more realistic to conclude the traffic stop was complete when Officer Ward told Alexander his documents would be returned after the canine

sniff. Thus, the canine sniff was thirty seconds or two minutes over our line, and it was done without reasonable suspicion to believe there were drugs in this particular vehicle. Does this mean Alexander was unconstitutionally detained? We think not.

In the first place, the line we have drawn is quite artificial. For example, if Officer Ward had been working with a partner who carried out the canine sniff while Ward completed the traffic checks, or if Fanta had been trained to do the sniff by himself while Ward completed those checks, the sniff would have occurred on the traffic stop side of our Fourth Amendment line. Cases like Merrett and Morales-Zomora teach that canine sniffs *during* lawful traffic detentions are not unconstitutional searches or seizures. When the constitutional standard is reasonableness measured by the totality of the circumstances, we should not be governed by artificial distinctions.

More importantly, we conclude that Officer Ward's conduct on the whole was not constitutionally unreasonable. Alexander violated a traffic law and thereby subjected himself and his vehicle to a period of official detention that might have substantially exceeded the five to eight minutes it took Officer Ward to complete the traffic stop. Viewed in this context, a two-minute canine sniff was a *de minimis* intrusion on Alexander's personal liberty, like routinely ordering a lawfully stopped motorist out of his vehicle to protect officer safety, the practice upheld in Mimms, 434 U.S. at 111. See also Ingraham v. Wright, 430 U.S. 651, 674 (1977). The

decision in Mimms turned on the government's strong interest in officer safety. The government likewise has a strong interest in interdicting the flow of illegal drugs along the nation's highways. See Place, 462 U.S. at 703. When applied to the exterior of vehicles, the canine sniff is an investigative procedure uniquely suited to this purpose -- it is so unintrusive as not to be a search, it takes very little time, and it "discloses only the presence or absence of narcotics, a contraband item." Place, 462 U.S. at 707. For these reasons, when a police officer makes a traffic stop and has at his immediate disposal the canine resources to employ this uniquely limited investigative procedure, it does not violate the Fourth Amendment to require that the offending motorist's detention be momentarily extended for a canine sniff of the vehicle's exterior.[3]

The judgment of the district court is affirmed.

A true copy.

Attest:
CLERK, U. S. COURT OF
APPEALS, EIGHTH CIRCUIT.

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[3]The government argues that Officer Ward's actions were validated by consent because Alexander did not object when Ward said that Fanta would sniff the vehicle's exterior, or when Ward said he would search the trailer after Fanta alerted. We disagree. The government "has the burden of proving that the necessary consent was obtained and that it was freely and voluntarily given, a burden that is not satisfied by showing a mere submission to a claim of lawful authority." Florida v. Rover, 460 U.S. 491, 497 (1983).

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEBRASKA

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/s/Gary D. McFarland, Clerk
By_____Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	**)Case No. 8:97CV370**
Plaintiff,	**)**
vs	**) JUDGMENT**
$404,905.00 in United	**)**
States Currency,	**)**
Defendant.	**)**

In accordance with my opinion dated May /s/28, 1998, judgment is entered for the plaintiff, United States of America.

Dated this /s/28 day of May, 1998.

BY THE COURT:

/s/ Joseph F. Bataillon
JOSEPH F. BATAILLON, JUDGE
UNITED STATES DISTRICT COURT

FILE STAMPED
FILED
DISTRICT OF NEBRASKA
AT_____M
/s/MAY 28 1998
/s/Gary D. McFarland, Clerk
By_____Deputy

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,	**Case No. 8:97CV370**
Plaintiff,	)
	)
vs	) **MEMORANDUM**
	)**OPINION**
$404,905.00 in United	)
States Currency,	)
Defendant.	)

This is a civil forfeiture action brought by the United States pursuant to 21 U.S.C. § 881(a)(6) (1982) against $404,905.00 in United States Currency. The money was seized from claimant Stephen Lewis Alexander on May 4, 1997. The case was tried before the Court on May 14, 1997. After reviewing the testimony and evidence submitted, the following represent my findings of fact and conclusions of law.

I. FINDINGS OF FACT

On May 4, 1997, Omaha police officer and K-9 handler, Anthony R. Ward, and his dog, Fanta, were in a cruiser working drug interdiction along Interstate 80 in Omaha, Nebraska. Ward's cruiser was positioned westbound on I-80 at 32nd Street. At 1:26 p.m., Ward observed a 1986 Ford F-250 truck pulling a U-Haul trailer traveling westbound in excess of the posted speed limit of 60 miles per hour. The cruiser's radar clocked the truck and trailer moving at 71 miles per hour. Ward proceeded to follow the truck, and pulled the truck over without incident at I-80 and 96th Street. Ward parked his vehicle behind the U-Haul trailer and approached the drivers side of the truck, where he asked the driver, Stephen Lewis Alexander, for his driver's license, registration, and paperwork on the U-Haul trailer. Alexander handed Ward the requested documents. Ward returned to his cruiser and completed a data check on the vehicles.

Ward testified that "everything came back OK" on the data check. Ward then exited the cruiser with his dog and approached Alexander. Ward advised Alexander that he was going to walk his dog around the vehicle and then return the documents. Ward did not recall Alexander's response but testified that Alexander didn't seem to object to Ward walking his dog around the vehicle. Ward commenced the canine sniff at the front end of the U-haul trailer, walked down the driver's side, turned and walked towards the rear, and proceed back on the opposite side. As Ward proceeded

to the right front portion of the trailer his dog alerted. Ward estimated that it took his dog less than thirty second to walk three quarters of the way around the perimeter of the trailer where it alerted. Ward advised Alexander that his dog had alerted on his trailer and advised Alexander that he would have to search the trailer. Ward testified that Alexander did not object to the search but exited his truck and unlocked the trailer for Ward.

Once the trailer was unlocked, Ward deployed his dog inside the trailer, containing old furniture, a mattress, stereo equipment and numerous cardboard boxes of various sizes. Ward gave his dog the command to search for drugs. The dog entered the interior of the trailer and proceeded directly to the rear section of the trailer, where he buried his head into a pile of boxes and began indicating. Ward entered the trailer and observed a pile of boxes and a duffel bag. Ward removed the duffel bag from the trailer. When he opened the bag, he smelled the odor of marijuana. Ward searched the bag and discovered bundles of money packaged in rubber bands. Ward set the bag aside and continued to search inside the trailer where he discovered more bundles of money wrapped in duct tape and newspaper located inside shoe boxes and camera boxes. Ward then halted his search and called for backup assistance. When backup assistance arrived, Ward removed Alexander from his truck, handcuffed him, and placed him in the rear seat of the backup cruiser. Ward handcuffed Alexander because "he was under investigation for possibly transporting drugs."

During his search of the trailer on the interstate, Ward spoke to Alexander on two occasions. Ward first asked him about the money in the duffel bag. Alexander told him that the money was his life's savings. When Ward inquired what Alexander did for a living, he replied that he was a handyman. Ward asked Alexander if he knew how much money was in the trailer, and he replied approximately $100,000.00. In a second conversation Ward told Alexander that the trailer contained more than a $100,000.00 and again asked Alexander about the source of the money. Alexander then changed his story telling Ward that he had obtained the money along with the furniture from his ex-wife in Chicago. Ward asked Alexander for his ex-wife's name, address and telephone number. Alexander responded that he did not know how to contact his ex-wife.

After thirty minutes, Ward determined that he should complete his search of the vehicles at the City's impound lot. Alexander's truck and trailer were towed to the impound lot. Ward placed Alexander in his cruiser and transported him in handcuffs to the impound lot. Upon arrival, Ward removed Alexander from the cruiser, took him inside the business office, placed him in a room and removed the handcuffs. Ward asked Alexander to sign a consent to search form and Alexander complied.[1] Gov. Ex. 3. Several police officers assigned to the narcotics unit met Ward at the impound lot

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[1]The written consent to search form purportedly signed by Alexander is not timed, dated or witnessed.

and assisted him in searching the U-Haul trailer. After completing his search of the trailer and discovering more bundles of money, Ward searched passenger compartment of the truck, where he found a duffel bag containing personal effects, tools, and a bundle of money in excess of $2,700.00.

Once the officers had completed their search of the truck and trailer, Ward advised Alexander that the officers would transport the currency to police headquarters for counting. At that point, Alexander told Officer Ward and Sergeant Hoffmann that he would give them two-thirds of the money, if they would forget the incident and let him go. The officers declined Alexander's offer and advised him that he could follow the officers downtown to police headquarters and obtain a receipt for the seized currency.

Alexander followed Ward to the police station, but then left the station upon learning that it would take the officers some time to count the currency. The officers finished counting the currency and booked the currency into the property room. Ward testified that his superiors, Sergeants Bovasso and Conahan, then contacted the Douglas County Attorney's office about filing state criminal charges against Alexander for bribing a public official.

At 9:30 p.m. on May 4, 1997, Sergeant Bovasso, Officer Ward and several other officers met Alexander in the lobby of police headquarters. Gov. Ex. 4. The officers escorted Alexander to the detention area, where he was read his Miranda rights and interviewed. Bovasso's report, received as a stipulated exhibit, states that Alexander admitted

during the interview that he was on federal probation on the charges of transporting marijuana. He also admitted that he was being paid $10,000.00 to drive to New York to transport a load of marijuana and to return to Las Vegas with the money. Alexander told officers that the wholesale price of marijuana is approximately $800 per pound. Based on the cash proceeds discovered in the trailer and truck totaling in excess of $400,000.00, officers estimated that Alexander had delivered approximately 500 pounds of marijuana to upstate New York.

During the interview, Alexander stated to the interviewing officers, "Why don't you guys take all the money and let me go." He told officers that he was arrested in Florida in 1991 and charged with conspiracy to distribute marijuana and money laundering. He stated that he was violating his federal probation by being out of the State of Arizona. After the interview was concluded, the officers arrested Alexander and booked him on a state charge of bribing a public official. Alexander was provided with a receipt for the seized currency.

III. CONCLUSIONS OF LAW

In a civil forfeiture proceeding, the government bears the initial burden of establishing probable cause to connect the property to be forfeited with some criminal wrongdoing. *United States v. $7,850.00*, 7 F.3d 1355, 1356 (8th Cir. 1993) (citing *United States v. $91,960.00*, 897 F.2d 1457, 1462 (8th

Cir. 1990)). Once probable cause is established, the burden shifts to the claimant to show by a preponderance of the evidence that the property is not subject to forfeiture or that a defense to forfeiture applies. *$7,850.00*, 7 F.3d at 1356 (citing *One Blue 1977 AMC Jeep CJ-5 v. United States*, 783 F.2d 759, 761 (8th Cir. 1986)).

The claimant, Alexander, contends that the government cannot establish probable cause to support the forfeiture. Alexander claims that Officer Ward illegally detained him and illegally seized the currency in violation of the Fourth Amendment. Alexander contends that under the facts of the case probable cause to forfeit the currency does not exist. The United States Supreme Court has ruled that because forfeiture proceedings are quasi-criminal in nature, the exclusionary rule applies barring evidence obtained in violation of the Fourth Amendment. *One 1958 Plymouth Sedan v. Pennsylvania*, 380 U.S. 693, 696 (1965). However, the fact that the currency may have been illegally seized does not immunize it from forfeiture. *$7,850.00*, 7 F.3d at 1357 (citing *United States v. $88,500.00*, 671 F.2d 293, 297 (8th Cir. 1982)). The government must show with untainted evidence that probable cause to forfeit exists. *Id.* (citing *United States v. $31,828.00*, 760 F.2d 228, 230 (8th Cir. 1985)).

A. Traffic Stop

The Court's initial discussion must focus on whether

the claimant was illegally detained and the currency illegally seized. Both the government and claimant stipulate that on May 4, 1997, Officer Ward stopped Alexander for speeding (filing 22 at Sec. B ¶ 6). Ward testified that the speed limit on I-80 at 32nd Street was 60 miles per hour and his radar equipment tracked Alexander's truck moving at a speed of 71 miles per hour. As the defendant presented no evidence that he was not speeding, the Court finds that Alexander was lawfully stopped for speeding.

Within the Eighth Circuit it is firmly established that a traffic violation -- regardless of how minor -- creates probable cause to stop the driver of a vehicle. *United States v. Beck*, 1998 WL 154455, *3 (8th Cir. April 6, 1998) (citations omitted). In this case, Alexander's speeding provided probable cause for Ward to stop Alexander's truck and U-Haul trailer. The law is also firmly established that, during an investigative traffic stop, an officer may detain a motorist for a reasonable time to conclude his investigation. *United States v. Carrazco*, 91 F.3d 65, 66 (8th Cir. 1996). The Eighth Circuit has held that checking for weapons, requesting identification from the occupants of the vehicle, inquiring about the travel purpose and destination as well as performing a multitude of background checks, including registration, license, and criminal history checks are within the reasonable scope of a traffic stop. *Beck*, 1998 WL 154455, *3 (citing *United States v. Hensely*, 469 U.S. 221, 235 (1985); *United States v. White*, 81 F.3d 775, 778 (8th Cir.), cert. denied, 117 S.Ct. 1996; *United States v. Carrazco*, 91 F.3d 65, 66 (8th Cir.

1996); *United States v. Dawdy*, 46 F.3d 1427, 1430 (8th Cir. 1995); and *United States v. Ramos*, 42 F.3d 1160, 1163 (8th Cir. 1994).

The facts of this case reveal that Officer Ward validly lawfully detained Alexander for a traffic violation. Once detained, Ward advised Alexander he had been stopped for speeding and requested his driver's license, registration, and U-Haul documents. Alexander complied with the request and tendered the documents to Ward, who returned to his cruiser and performed a records check to ascertain whether the license was valid and the vehicles were stolen. Officer Ward's license and vehicle registration checks were clearly within the reasonable scope of the detention.

B. Canine Sniff

Alexander contends that conducting a canine sniff around the U-Haul trailer exceeded the reasonable scope of the traffic stop and thereby constituted an illegal detention in violation of the Fourth Amendment. In *United States v. Place*, 462 U.S. 696 (1983), the United States Supreme Court examined canine sniffs under the requirement of the Fourth Amendment. The Court declared that "the canine sniff is *sui generis* . . . . no other investigative procedure . . . is so limited in the manner in which the information is obtained and in the content of the information revealed by the procedure." *Id.* at 707. Because a canine sniff "could reveal nothing about noncontraband items," it does not generally

intrude into a person's reasonable expectation of privacy." *United States v. Jacobsen*, 466 U.S. 109 (1984). The Court concluded that a canine sniff performed by a trained canine does not constitute a "search" within the meaning of the Fourth Amendment. *Id.*

The appellate courts have further ruled that once a trained canine alerts to the presence of drugs in luggage or in a motor vehicle, probable cause to search is established. *Place*, 462 U.S. 706, and *United States v. Bloomfield*, 40 F.3d 910, 919 (8th Cir. 1994). Once, probable cause is established, an officer can search a car without a warrant under the automobile exception to the warrant requirement. *Id.* (citing *Chambers v. Maroney*, 399 U.S. 42, 52 (1969).

Between these legal principles lies an issue that appears to be one of first impression for this circuit: Whether an officer must have reasonable suspicion to conduct a canine sniff during a routine traffic stop. The government contends that a canine sniff is within the reasonable scope of a traffic stop conducted by a drug indictment officer working with a trained canine. The claimant contends that a canine sniff is not reasonably related in scope to the circumstances that justified the initial traffic stop and therefore exceeds the reasonable scope of a routine traffic stop and requires reasonable suspicion, based on articuable facts, that criminal behavior is afoot to justify continued detention.

The Eighth Circuit has held that in order for police officers to briefly detain luggage for a sniff search without violating the Fourth Amendment, "they must have either the

owner's consent or a reasonable suspicion supported by articuable objective facts that the luggage contains drugs." *United States v. Green*, 52 F.3d 194, 197-98 (8th Cir. 1995) (citing *United States v. Jones*, 990 F.2d 405, 407 (8th Cir.) cert. denied, 114 S.Ct. 35 (1993)). However, investigative detentions at airports, train stations, and bus terminals are distinguishable from routine traffic stops. In contrast to traffic stops in which law enforcement officers have probable cause to believe that a traffic violation has occurred, travelers transporting luggage through common thoroughfares have committed no violation of law justifying interference and detention. Thus, in order to effectuate a lawful detention of a traveler, the law requires officers to obtain consent for a canine sniff or to possess reasonable suspicion based on articuable facts that the traveler's luggage contains drugs. Given the distinguishing nature of traffic stops, the Court finds that the Eighth Circuit's ruling requiring reasonable suspicion for canine sniffs of luggage does not properly apply to the facts of this case.

Courts outside this circuit have ruled that law enforcement officers do not require individualized reasonable suspicion of drug-related criminal activity before subjecting otherwise lawfully detained vehicles to canine sniff. *See Merrett v. Moore*, 58 F.3d 1547, 1553 (11th Cir. 1995) (holding that canine sniff of exterior of cars at roadblock checkpoint absent individual suspicion of drug-related criminal activity was not unconstitutional where canine sniffs occurred while motorist were lawfully stopped in public place

during license check, and motorist were not delayed to conduct sniffs); *United States v. Rodriguez-Morales*, 929 F.2d 780, 788 (1st Cir. 1991) (holding that canine sniff of the exterior of a vehicle which is legitimately within the custody of the police is not a search within the meaning of the Fourth Amendment; and that subjecting the exterior of a motor vehicle to a drug detection dog does not infringe upon the vehicle owner's Fourth Amendment rights); *United States v. Morales-Zamora*, 914 F.2d 200, 205 (10th Cir. 1990) (holding that police officers do not need an individualized reasonable suspicion of drug-related criminal activity before subjecting a vehicle lawfully detained to a canine sniff); and *United States v. Taylor*, 955 F.Supp. 763, 769 (E.D. Mich. 1997) (holding that the use of a canine to sniff the air adjacent to the perimeter of this vehicle, as it stood lawfully -- and briefly -- detained did not constitute a search within the meaning of Fourth Amendment).

Whether a police detention is reasonable in any particular set of circumstances is a fact bound inquiry. Hence, to determine whether a detention following a lawful stop of a motor vehicle is reasonable, the court must consider both the length of the detention and the law enforcement officer's effort to conduct his investigation in a quick and unintrusive manner.[2] *Beck*, 1998 WL 154455, *3 (citing

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[2]In *Merrett*, the Eleventh Circuit provided this analysis:
Here, the dogs sniffed the exterior of the plaintiffs' vehicles, they did not invade plaintiff plaintiffs' home or their bodily integrity. The sniffs occurred

Bloomfield, 40 F.3d at 916-917). The facts of this case establish a mixed-motive stop in which a traffic violation speeding -- justified the initial stop. Officer Ward testified that he is a K-9 handler whose primary duty is drug interdiction along the interstate system in Omaha. He defined "drug interdiction" as the attempt to locate individuals transporting drugs or drug proceeds. Ward explained that part of his function as a K-9 handler is to take his dog with him on every traffic stop on the interstate. Ward testified that on 99 percent of his traffic stops he takes his dog out of the cruiser and walks the dog around the detained vehicle. He further explained that his normal procedure during a traffic stop was to approach the vehicle with his dog after the data check, advise the driver that he is going to walk his dog around the vehicle before he returns the license and registration, and then proceeds to walk his dog around the vehicle.

Ward testified that the usual length of a traffic stop on the interstate was ten to twelve minutes. He estimated that, on May 4, 1997, five to eight minutes elapsed between the

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> while plaintiffs were stopped in a public place. And because the sniffs occurred during the license check, plaintiffs were not delayed to conduct the sniffs. The sniffs also alerted the officers only to the potential presence of drugs; they did not expose the contents of plaintiffs' vehicles to public view.

Merrett, 58 F.3d at 1153.

time he obtained the requested documents from Alexander and the time he received the requested information from police dispatch. Ward conducted the canine sniff of the U-Haul trailer prior to returning Alexander's license, registration and rental papers. Ward estimated that he took under two minutes to conduct the canine sniff, return the dog to the cruiser, and approach Alexander to advise him the dog had alerted to the trailer. Ward also estimated that the actual canine sniff around the U-Haul trailer took less than thirty seconds. Officer Ward's testimony establishes that he conducted the canine sniff of the exterior of the U-Haul trailer in a quick and unintrusive manner. Accordingly, the Court finds that a brief detention of a motorist by a drug interdiction officer to conduct a contemporaneous, on-site canine sniff is reasonable if conducted pursuant to a valid traffic stop founded on probable cause.

The Court need not reach the issue of consent because once Ward's dog alerted, Ward had probable cause to believe that the U-Haul contained narcotics and was authorized to search the trailer without Alexander's consent.[3] *United States v. Munroe*, 1998 WL 227140, *2 (8th Cir. May 8, 1998). A warrantless search of a motor vehicle is reasonable if there is probable cause to believe it contains contraband. *United*

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[3]A dog alert might not give a law enforcement officer probable cause to search if the particular dog had a poor accuracy record. The evidence presented established that Officer Ward's dog, Fanta, had never falsely alerted.

States v. Ross, 456 U.S. 798, 809 (1982). Although the automobile exception is founded, in part, on exigency, the Supreme Court has declared that "the justification to conduct such a warrantless search does not vanish once the car has been immobilized; nor does it depend upon a reviewing court's assessment of the likelihood in each particular case that the car would have been driven away, or that its contents would have been tampered with, during the period required for the police to obtain a warrant." *Michigan v. Thomas*, 458 U.S. 259, 261 (1982) (per curiam) (footnote omitted). Once a police officer has probable cause to search a vehicle, he need not obtain a search warrant first, even if he has the time and opportunity. *United States v. Crabb*, 952 F.2d 1245, 1246 (10th Cir. 1991). Accordingly, the Court finds that the search of Alexander's truck and trailer on the interstate and at the impound lot were conducted pursuant to law.

C. Civil Forfeiture

Having determined that the claimant was not illegally detained and the currency was not illegally seized in violation of the Fourth Amendment, the Court must decide whether the government met its burden of establishing probable cause to connect the currency with some form of criminal wrongdoing. The testimony of Officer Ward established when he opened the U-Haul trailer, his dog indicated the presence of drugs in the back area of the trailer, and he smelled the odor of marijuana inside the trailer. When Ward searched the area, he

found a duffel bag with a strong odor of marijuana containing bundles of currency wrapped in rubber bands. During his search of the trailer and truck Ward discovered more currency secretly concealed inside various boxes as well as currency located at duffle bag in the passenger compartment of the truck.

Officer Ward also testified to the conflicting stories told to him by Alexander. Alexander first told Ward that the currency represented his life's savings. A short while later he told Ward that his ex-wife had given him the money and furniture. However, Alexander could not provide Ward with her name, address, or telephone number. Once the vehicles were towed to the impound lot, Ward testified that Alexander offered Officer Ward and Sergeant Hoffmann two thirds of the money, if they would forget the incident and let him leave.

When police transferred the currency to central police headquarters for counting and safekeeping, Alexander followed the officers to the police station to obtain a receipt for the seized currency. The information report prepared by Sergeant Bovasso records that at approximately 9:30 p.m., several officers, including Bovasso and Ward, met with Alexander in the lobby. Gov. Ex. 4. Sergeant Bovasso told Alexander that the officers wanted to speak to him about the money and proceeded to an interview room where Alexander was advised of his *Miranda* rights. Thereafter, Alexander told the officers that he had agreed to transport a load of marijuana to upstate New York and return proceeds to an

unnamed contact in Las Vegas in exchange for $10,000.00. Alexander also told the officers that he was arrested in 1991 for conspiracy to distribute marijuana and was currently on federal probation. During the interview Alexander also said to the officers, "Why don't you guys take all the money and let me go." *Id.* Alexander was later arrested and booked on a state charge of bribery. Gov. Ex. 4.

III. CONCLUSION

Based on the evidence presented at trial, the Court finds that the government has established probable cause to connect the currency to drug trafficking. The defendant has failed to present any evidence the lawfully seized currency is not connected to drug trafficking or that a defense to forfeiture applies in this case. Accordingly, the Court enters judgment for the government.

Dated May, /s/28, 1998.

BY THE COURT:

/s/ Joseph F. Bataillon

JOSEPH F. BATAILLON, JUDGE

UNITED STATES DISTRICT COURT

APPENDIX C

UNITED STATES CONSTITUTION
AMENDMENT FOUR

28 U.S.C. 1254(1)
21 U.S.C. 881(a)(6)

U.S. Constitution: Fourth Amendment

Fourth Amendment - Search and Seizure

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

28 U.S.C. 1254(1)

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

> (1) By writ of certiorari granted upon the petition of anyparty to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By certification at any time by a court of appeals of anyquestion of law in any civil or criminal case as to which instructions are desired, and upon such certification the SupremeCourt may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

21 USC Sec. 881(a)(6)

(a) Subject property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

> (6) All moneys, negotiable instruments, securities, or other things of value furnished or intended to be furnished by any person in exchange for a controlled substance or listed chemical in violation of this subchapter, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this subchapter, except that no property shall be forfeited under this paragraph, to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.